

CAUSE NO. 2019-06610

JANE DOE § IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
v. §
§ 80th JUDICIAL DISTRICT
BRENNANS OF HOUSTON, INC. d/b/a §
BRENNANS OF HOUSTON § **JURY TRIAL DEMANDED**

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff Jane Doe¹ complains of Defendants Brennans of Houston, Inc. d/b/a Brennans of Houston ("Brennans") and Christopher Lockhart and, for cause of action, would respectfully show the Court the following:

I. SUMMARY OF LAWSUIT

Plaintiff is a lawyer and partner at the Houston office of a large international law firm. She has practiced law for over twelve years.

On October 19 and 20, 2015, Plaintiff was raped and sexually assaulted by a Brennans bartender, Sean Kerrigan, after dining and drinking at Brennans. Kerrigan was aided and abetted by Brennans manager, Christopher Lockhart. Plaintiff had never met Kerrigan or Lockhart prior to that evening.

Early in the evening on the night in question, Kerrigan slipped a drug into Plaintiff's drink. Plaintiff remembers almost nothing after her second drink. Further, on the night in question, Kerrigan over-served Plaintiff with alcohol at Brennans.

Later in the evening, Plaintiff was joined at the bar by Brennans manager Lockhart. Surveillance video shows Lockhart taking a visibly incapacitated Plaintiff out of Brennans, with another Brennans manager looking on, but doing nothing. Plaintiff has learned from law enforcement that Kerrigan and Lockhart then took her from Brennans to another bar. From

¹ Plaintiff's identity has been provided to Brennans and its counsel.

there, Kerrigan and Lockhart took Plaintiff to her home, where she lived alone. Kerrigan raped Plaintiff an unknown number of times at her home that night and into the next morning. Lockhart, at a minimum, aided and abetted the rape and the attempted continuation of the assault the following morning.

Plaintiff went to the emergency room at Ben Taub Hospital the evening of October 20, where a physical examination was performed, a rape kit was collected, and significant vaginal and other physical injuries consistent with rape were documented. Plaintiff simultaneously received invasive and extremely painful treatment from Ben Taub so as to avoid sexually transmitted diseases Kerrigan might have otherwise transmitted to her.

In July 2018, Kerrigan was indicted for felony aggravated sexual assault of Plaintiff. On the same day, Kerrigan was indicted for felony sexual assault of another female, for an unrelated sexual assault.

Ultimately, Plaintiff took medical leave from her law firm because of the emotional trauma. Plaintiff is currently undergoing treatment for Post-Traumatic Stress Disorder that the savage assault has caused her.

On November 15, 2018, Kerrigan passed away suddenly in Houston from an unknown cause.

II. DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3, Pursuant to Tex. R. Civ. P. 190.

III. PARTIES

Plaintiff, Jane Doe, is a resident of Harris County, Texas.

Defendant, Brennans of Houston, Inc. d/b/a Brennans of Houston, is a Texas corporation with its principal place of business in Houston, Harris County, Texas. This defendant has

answered and appeared through counsel and counsel is being served with this amended petition, pursuant Rule 21a.

Defendant Christopher Lockhart is an individual and resident of Harris County Texas. He may be personally served at his residence at 2608 Stanford Street, Apartment C, Houston, TX 77006-2900, or wherever he may be found.

IV. JURISDICTION AND VENUE

This court has jurisdiction over this matter because the damages in question exceed the minimum jurisdiction of this court. Venue is proper in Harris County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE §15.002(a)(3) because Defendant Brennans' principal place of business is in Harris County, Defendant Lockhart is a resident of Harris County, Texas and because the incident at issue occurred in Harris County.

V. BACKGROUND

On October 19, 2015, Plaintiff went to Brennans restaurant in Houston with a male colleague from her firm. They arrived at Brennans at approximately 5:15 p.m., where they sat in the bar's patio area. At 6:45 pm, Plaintiff's colleague left, and she remained to eat dinner and sat at the bar. Sean Kerrigan was the sole bartender at Brennans at the time and the only one who served Plaintiff that evening.

Almost immediately upon the colleague's departure, Kerrigan "spilled" Plaintiff's drink and replaced it with a bourbon-based drink "on the house." Kerrigan drugged Plaintiff with this drink. Plaintiff has no memory of finishing the bourbon-based drink, and otherwise has almost no memory of the evening after approximately 6:45 p.m. Brennans surveillance video shows that Plaintiff remained at the bar, where she was served some food and several more drinks by Kerrigan. At some point in the evening, Plaintiff was joined by another woman who was sitting

at the bar, who Plaintiff did not know and still does not know. This woman stayed for the rest of the evening, and presumably was an associate of Kerrigan and Brennans manager, Christopher Lockhart.

Later in the evening, Plaintiff and this other woman were joined by Brennans manager Lockhart at the Brennans bar. Plaintiff has no memory of meeting Lockhart.

At approximately midnight, Brennans surveillance video shows an obviously impaired Plaintiff being led out of Brennans by Brennans manager Lockhart and his female associate, in the presence of another Brennans manager and Kerrigan. The other Brennans manager did nothing to intervene, in violation of both legal duties and Brennans' own written policies for dealing with visibly impaired customers. Although Plaintiff has no memory of this, she has been advised by prosecutors that Kerrigan and Lockhart took Plaintiff to a neighboring bar. From there, they went to Plaintiff's home; Plaintiff has no memory of arriving home. For whatever reason, Lockhart took it upon himself to videotape Plaintiff looking for her keys at her home. In the video, it is obvious that she is severely impaired. Plaintiff has no memory of these events.

Plaintiff's next memory is regaining consciousness briefly at some point before dawn, in her bed, nude, with Kerrigan on top of her, forcibly engaging in very rough vaginal intercourse. She felt extreme pain during the rapes, and said so in an attempt to get him to stop, but was too physically incapacitated to force him to stop. Plaintiff drifted in and out of consciousness for the remainder of these assaults.

The next morning, she again regained consciousness, nude in bed, with both Kerrigan and Lockhart pulling the covers off of her and laughing. Although still extremely disoriented, Plaintiff was able to remove them from her house shortly thereafter. Nonetheless, Kerrigan continued to aggressively attempt to rape Plaintiff again (as she was attempting to make them

leave), including pushing her down on her back porch and groping her breasts and genitals while she, still disoriented, fought back. The men only left when they became concerned that a neighbor may hear the commotion and yelling. Plaintiff later discovered that the men had stolen prescription medication and money from her purse.

That evening, Plaintiff went to Ben Taub hospital where she reported the details of the evening and the rape, along with ongoing nausea and vomiting, extreme vaginal pain and difficulty urinating. Among other things, a rape assessment was done. The assessment confirmed significant vaginal injuries consistent with rape.

Plaintiff advised Brennans' owner, Alex Brennan-Martin of the incident. Brennan-Martin met with her and she provided Brennan with these details. At the time, Brennan-Martin knew the full details of the incident, having already reviewed surveillance footage and having had witnesses interviewed. Initially, Brennan-Martin advised that he had been counseled not to provide her with the names of the two men, Brennan-Martin only advised that one of them (Lockhart) was a waiter, which was untrue. In fact, he was the front-of-house manager. Brennan-Martin advised that he had reviewed surveillance video and it showed only Lockhart carrying Plaintiff out of Brennans – which is also contradicted by the actual surveillance video. Brennan-Martin later advised Plaintiff that Brennans had terminated the employment of Kerrigan and Lockhart. Brennan-Martin did not ever disclose the true facts of the evening at his restaurant to Plaintiff.

After conducting an extensive investigation, on July 19, 2018, the Harris County District Attorney's office indicted Kerrigan for felony aggravated sexual assault of Plaintiff. On that day, the District Attorney also indicted Kerrigan for another felony sexual assault of another victim; that assault occurred subsequent to his rape of Plaintiff.

Prior to hiring Kerrigan, Brennans appears to have done no background check on him. Prior to being hired by Brennans, Kerrigan had recently moved to Houston from the New York/New Jersey area, where he had a criminal record. Lockhart had been a longtime employee of Brennans, and gradually rose to higher positions, despite a very checkered work history there, including infractions related to alcohol.

Plaintiff has suffered and continues to suffer extreme emotional distress from her rape and the aftermath. The distress has greatly interfered with both her emotional well-being and her work. On August 17, 2018, the distress reached a point where she has had to take medical leave from her firm, and she is currently undergoing treatment for PTSD. Her distress has cost her a tremendous amount in lost earnings, along with medical and counseling expenses. At this point, she does not know when she will be able to return to work in any capacity, and she will undoubtedly continue to struggle with the emotional ramifications of this rape for the rest of her life.

VI. CAUSES OF ACTION

CAUSE OF ACTION 1: DRAM SHOP (BRENNANS)

Plaintiff re-alleges the allegations above.

Defendant Brennans, and its agents, servants, employees, security personnel and management, violated the Dram Shop Act, as codified as Texas Alcohol Beverage Code § 2.02, *et seq.* Defendant Brennans was a negligent provider under the Act, in that Defendant served, sold, or provided alcoholic beverages to a person who was obviously intoxicated to the extent that they presented a clear danger to themselves and others. This conduct contributed to Plaintiff's state of intoxication and was a proximate cause of the injuries sustained by Plaintiff. The bartender (Kerrigan), wait staff, managers (including Lockhart) and employees who served

alcohol to Plaintiff were all acting in the course and scope of their employment with Defendant. Lockhart, and other management and staff were acting in course and scope of their employment when they failed to intervene, in violation of both legal duties and Brennan's own written requirements for dealing with visibly impaired customers. Accordingly, Defendant Brennans is responsible for the actions of their management, bartenders, wait staff, security personnel, and all other employees under the legal theory of *respondeat superior*. To be clear, Plaintiff does not allege that Kerrigan or Lockhart were acting in the course and scope of their employment with Brennans when Kerrigan raped Plaintiff, with Lockhart's aid and assistance.

To the extent that Defendant seeks to shield itself from liability by claiming protection under the safe harbor provisions of the Dram Shop Act, Defendant directly and/or indirectly encouraged its servers to violate the Dram Shop Act by continuing to serve an intoxicated person, among other reasons. Thus, Defendant is not entitled to claim safe harbor provisions.

As a result of Defendants' actions and omissions, Plaintiff has suffered damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

CAUSE OF ACTION 2: NEGLIGENCE (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

Brennans owed Plaintiff a duty of ordinary care to prevent Kerrigan from overserving her with alcohol, and to prevent Lockhart from taking a visually impaired Plaintiff from the restaurant, with other managers looking on, in violation of Brennans' own written policies. This

includes a duty of care in hiring, employing, supervising, managing and retaining Kerrigan and Lockhart. As set forth herein, Brennans breached this duty. Brennans' breaches of these duties proximately caused the incident at issue and for Plaintiff to suffer damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 3: NEGLIGENCE PER SE (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

At the time of the incident in question, Defendant Brennans sold and/or served alcoholic beverages to Plaintiff after it had become apparent to Defendant that Plaintiff was obviously intoxicated to the extent that she presented a clear danger to herself and others. Such action was in violation of Sections 2.02 and 2.03 of the Texas Alcoholic Beverages Code. Brennans' breaches of these duties proximately caused the incident at issue and for Plaintiff to suffer damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 4: PREMISES LIABILITY (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

Plaintiff was an invitee at Brennans Restaurant, which is owned, operated and managed by Defendant Brennans. Brennans breached its duty of care owed to Plaintiff, as an invitee of the premises, by failing to properly manage and supervise its employee, Kerrigan, and its manager Lockhart. Brennans' acts and omissions proximately caused Plaintiff to suffer damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 5: GROSS NEGLIGENCE (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

The acts and/or omissions of Brennans (including its employee and manager) as described above, when viewed objectively from Brennans' standpoint, involve an extreme degree of risk considering the probability and magnitude of potential harm to others. Brennans had subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety and/or welfare of others, including Plaintiff. Therefore, Brennans' acts and omissions constitute gross negligence and malice as those terms are understood by law. Therefore, Plaintiff prays that punitive damages be awarded against Brennans.

Any caps on punitive damages, under state or federal law, should not be applied because Brennans, and its employee and manager's conduct disqualifies Brennans from the benefit of any

caps on exemplary damages. Specifically, Plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

Section 41.008 of the Texas Civil Practice & Remedies Code. Further, Plaintiff's personal injuries arise as a result of conduct that violates these sections of the Penal Code.

CAUSE OF ACTION 6: AIDING AND ABETTING SEXUAL ASSAULT AND BATTERY (LOCKHART, INDIVIDUALLY)

Plaintiff re-alleges the allegations above.

At the time of events described above, Lockhart left with Plaintiff from Brennans (literally dragging her from the restaurant) and took her to a neighboring bar. Lockhart then accompanied Plaintiff to her home where his accomplice, Kerrigan, committed sexual abuse, sexual assaults, and sexual battery on Plaintiff with Lockhart's aid and assistance. Lockhart was also in Plaintiff's room the next day, as she laid in her bed nude, pulling the covers off of her and laughing at her, with Kerrigan. Accordingly, Lockhart aided, abetted, assisted and facilitated Kerrigan's sexual assault of Plaintiff. As a result of the abuse, Plaintiff has suffered damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 7: ASSAULT (LOCKHART, INDIVIDUALLY)

Plaintiff re-alleges the allegations above.

At the time of events described above, Lockhart left with Plaintiff from Brennans (literally dragging her from the restaurant), took her to a neighboring bar and then to her home. There, Lockhart intentionally or knowingly placed her in reasonable apprehension of an imminent harmful or offensive contact, and Lockhart had the present, apparent ability to cause the harmful or offensive contact. Lockhart's conduct was extreme and outrageous. As a result, Plaintiff has suffered damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

VII. DAMAGES

Plaintiff incorporates the previous allegations.

As a direct and proximate result of Defendants' acts and omissions described above, Plaintiff has incurred one or more of the following categories of damages:

- a. Conscious physical and mental pain, and suffering and anguish, past and future;
- b. Physical impairment, past and future;
- c. Loss of enjoyment of life and peace of mind, past and future;
- d. Reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future;
- e. Loss of earnings and earning capacity; and
- f. Such other damages that will be shown at trial.

Plaintiff also seeks exemplary damages in an amount within the jurisdictional limits of the court.

VIII. PRESERVATION OF EVIDENCE

Plaintiff hereby requests and demand that each Defendant preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance or security tapes, business or medical records, incident reports, bills, telephone call slips or records, correspondence, facsimiles, email, voicemail, text messages, any evidence involving the incident in question, and any electronic image or information related to the referenced incident or damages. Failure to maintain such items will constitute “spoliation” of the evidence.

PRAYER

WHEREFORE, Plaintiff Jane Doe prays that Defendants Brennans of Houston, Inc. d/b/a Brennans of Houston and Christopher Lockhart answer this Petition, that this case be set for trial without delay, and that Plaintiff recover a judgment from Defendants for her damages in such amount as the evidence may show and the trier of fact may determine to be proper, of at least \$20,000,000.00, in addition to pre-judgment interest, post-judgment interest, costs, punitive damages, and all other and further relief to which Plaintiff may show herself justly entitled.

Plaintiff respectfully requests a trial by jury.

Respectfully submitted,

THE BUZBEE LAW FIRM

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I certify that I sent the foregoing pleading to counsel in this case, via e-filing, on April 3, 2019:

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